

## **JUDGE MICHAEL'S POLICY REGARDING SERVICE OF MOTIONS IN CONTESTED MATTERS**

As we all know, motions filed in contested matters that request relief from the Court must be served according to Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 9014. This service will normally be memorialized in a certificate of service, which can either be attached to the motion or filed as a separate pleading. Bankr. N.D. Okla. Local R. 9004(f). My staff checks service of all motions to ensure compliance with Rule 7004 and any applicable local rules. In the past, we conducted this review soon after your motion was filed, so that we could alert you to any problems with service. If your motion did not require a filing fee, we usually denied the motion and informed you of the defect. If your motion did require a filing fee, e.g., Motions for Relief from Stay and Motions for Abandonment of Property, we usually tried to give you an opportunity to amend your certificate of service or to re-serve the motion, if necessary. Unfortunately, this practice (which effectively meant that we were checking service twice) has taken staff time away from more pressing Court matters.

**The purpose of this memo is to put practitioners on notice that Chambers will no longer notify you of defects in the service of your motions.** What this means for you: We will no longer send you an "Order to Serve Debtor" or an "Order to Provide Proof of Service" prior to denying your motion. **You will be responsible for ensuring that your motion is accompanied by a certificate of service, and that it strictly adheres to this Court's local rules.** The first notice of defective service that you will get from us will now be in the form of an order denying the motion.

On a related note, the Court is aware that our local rules do not give any deadlines for when your certificate of service must be filed. But 11 U.S.C. 362(e) places time limitations on the Court for when it must take action, at least for Motions for Relief from Stay. In order to take action on these motions within the 30-day window provided by the statute, we simply must have an acceptable certificate of service on file. **Be advised that if your certificate of service is not on file by the end of the notice period provided in your motion, your motion will be subject to denial for failure to provide proof of service as required by Bankr. N.D. Okla. Local Rule 9004(f).** If the certificate of service is acceptable to the Court, no further action will be taken on your motion until you submit a request for entry of order. If no certificate of service is on file by the end of the notice period (or if service is defective), the motion will be subject to denial at that time without further notice to you.

In order to assist you in getting it right, my staff has enumerated some of the most common problems with service that will cause your motion to be denied:

### **1. Get the parties right:**

- Make sure that all the correct parties are served. For example, Federal Rule of Bankruptcy Procedure 9014 requires that notice of motions for relief "shall be afforded the party against whom relief is sought." This is little more than common sense codified. If you want to affect someone's interests, give them notice.

- Motions for Relief from Stay and Motions for Abandonment of Property require service on the **debtor** (including the **joint debtor**, if there is one), the **debtor's attorney** per Rule 7004(b)(9), and the **trustee**—in addition to any other parties specified by rule or statute.
- Motions for Abandonment **must** also be served on **all creditors** pursuant to Rule 6007(a).
- Motions to Avoid Lien must be served upon the **creditor** whose lien you seek to avoid—in addition to any other parties specified by rule or statute.
- If you are seeking stay relief against a co-debtor under 11 U.S.C. §§ 1201 or 1301, don't forget to serve the **co-debtor**. Just for fun, also take a look at §§ 1201(d) and 1301(d) (twenty day notice required) and Rule 9006(f) ( an *additional* three days required if service is made by mail).

## 2. Get the content right:

- The certificate of service must include the **date of service**, the **manner of service** (whether by personal delivery, first-class mail, certified mail, etc.), and the **names and addresses** of the persons and entities served. Bankr. N.D. Okla. Local R. 9004(f). Note that the Court's Administrative Procedures (specifically at section III(B)(4)) outline when a certificate of service is required to supplement the "Notice of Electronic Filing" generated by the ECF System.
- When you are specifying the names and addresses, especially of debtors and joint debtors, be careful to serve these parties at the **addresses listed on the docket sheet**. Note that joint debtors don't always receive mail at the same address. If the debtors have submitted a change of address form, you are required to serve the debtors at the address on file at the time your motion is filed.
- If your motion requires service on a **corporation or bank**, note that service under Rule 7004 often requires that the motion be sent to the attention of an officer or agent and sometimes by certified mail. See Judge Michael's Policy Regarding Proper Service on Corporations and Banks for more information.
- You may use the official mailing Matrix to provide the names and addresses of parties served, but you may not simply make reference to this Matrix. It is not enough to simply state that a motion was served "to all parties on the official mailing Matrix on file in this case." As stated above, Local Rule 9004(f) requires that you **list names and addresses in a certificate of service for all parties not receiving notice from the ECF System**. Attaching the Matrix to your certificate is acceptable—but if you promise that a copy of the Matrix is attached, be sure that it is actually attached.

### 3. Get the dates right:

- Logically, we all know that you can't serve a file-stamped copy of your motion before the motion has been filed. Therefore, your certificate of service can't be dated before the date of filing of your motion. If it is, we have to deny your motion for defective service.
- Along the same lines, the Court wants to know that you ***have served*** the motion, not that you ***plan to do it*** tomorrow (remember, "the best laid plans of mice and men . . ."). A certificate of service that shows service will take place on a date after the certificate is filed is defective and will cause your motion to be denied. *See* Bankr. N.D. Okla. Local R. 9004(f) ("If service is not to be accomplished on the day the pleading is filed, a separate certificate of service shall be filed to which a copy of the first page of the pleading served shall be attached.").
- Also, keep in mind that compliance with this Court's local rules requires that a file-stamped copy of your motion be ***served on all parties in interest within 2 days of the filing date***. Bankr. N.D. Okla. Local R. 9013(b). With the advent of electronic filing, this should not be a problem, as you get a copy of your pleading (and the electronic file stamp) immediately upon the filing of the pleading.

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